IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 10 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JM BUDDHBHATTI for Appellant

MR AJ DESAI, APP for Respondent

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 15/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant was the accused in Sessions Case No.73 of 1995 before the learned Sessions Judge, Sabarkantha who, by judgment and order dated 30th November, 1995, convicted him of the offence under Section 302 of the I.P.C. and sentenced him to life imprisonment and a fine of Rs.500/-, in default, Rigorous Imprisonment for two months. The charge against the appellant was that he stabbed his own uncle Naranbhai Nathabhai to death with a sword. The incident allegedly occurred at about 1.30 in the afternoon on 21st January, 1995 in the field of the deceased in village Dejarota.

2. The prosecution version of the incident is to be found in the evidence of Dahiben Bijalbhai (p.w.4). Her husband had died 20 years ago. She had one son, aged 15, who was grazing donkeys. Her daughter Gajiben had been married but after the death of her husband, she had been residing with her. She was working as a labourer in the field of the deceased. She had kept the 'bore' trees growing in the said field. She used to live in a hut on the said field to look after the trees. She also used to cultivate the land of the deceased Naranbhai. Naranbhai was unmarried.

3. On the date of the incident, the appellant Hasmukhbhai and his wife came to the field. Dahiben and her daughter Gajiben were sitting there outside the gate. It was about 1 o'clock. Naranbhai came there and sat on a cot in front of Dahiben's hut. Veenaben, the wife of the appellant, was sent to prepare tea. Dahiben went there to serve tea. She gave one saucer of tea to Naranbhai and she also served tea to Hasmukhbhai. At that time, Hasmukhbhai (the appellant) pushed the sword into the right side of Naranbhai and gave another blow on the left side. Naranbhai said "what have you done?" He fell off the cot. Hasmukhbhai fled towards Himmatnagar. Dahiben went to the village and raised shouts in the Kanbiwada that the appellant had killed his uncle.

4. According to the prosecution, soon after the incident, Hasmukhbhai went to the Himmatnagar Town Police Station and gave a report of the incident (Mark 6/1) which was taken down by P.I. Joravarsinh Chavda (p.w.13). Since the said report contained a confessional statement, it has not been exhibited in evidence but that part of the report which identifies the appellant as the person who had made the report is admissible in evidence.

5. P.I. Chavda then proceeded to the place of the

incident and started investigation. In the course of investigation, the sword was discovered from another field near the place of incident at the instance of the accused. The discovery panchnama is at Exh.31 and it was witnessed by the panch witness Shivsinh Halusinh Jhala (p.w.9).

6. The post-mortem was performed by Dr. Narendrakumar Pandey (p.w.1) on 22nd January, 1995 and the post-mortem report (Exh.8) shows the following two external injuries:

(1) Transverse I.W. 4 cm x 2.5 cm x 4 cm on the 7th intercostal space on the Rt. Post axillary Line
(2) Transverse I.W. 8 cm x 2 cm x 2 cm on the middle part of the Lt. thigh.

The corresponding internal injuries were noted in the post-mortem report. According to the doctor, death was due to shock following the injury to the vital organs namely, right lung and liver. According to the doctor, the injuries were sufficient to cause death in the ordinary course of nature and they could have been caused by the muddamal sword which was shown to him.

7. In view of the medical evidence, it cannot be disputed that the death was homicidal. The question is whether it was the appellant who caused the injuries, which proved fatal.

8. According to the prosecution, Naranbhai was unmarried and the appellant was his nephew. One Dashrathbhai Parshottambhai (p.w.3) had purchased a plot of land from Naranbhai. About 10 days before the incident, Dashrathbhai had performed 'Khaath-muhurat' on the said land. The ceremony was performed by Kantibhai Dahyabhai Joshi (p.w.2). According to him, the mother of the accused had raised an objection saying "why have you kept our plot?" Dashrathbhai did not support the prosecution case that there was an exchange of words at that time. However, Kantibhai (p.w.2), who had performed the ceremony, had clearly said that some objections were raised.

9. However, the prosecution case rests mainly on the evidence of Dahiben. It appears that Dahiben's daughter Gajiben (p.w.7) was also near the place of incident and when she returned from fetching water from the well, she had seen the deceased lying dead but she had not

witnessed the incident. Dahiben was cross-examined at great length but nothing was elicited which would shake her testimony. It was suggested to her in cross-examination that Naranbhai was a frequent visitor at her hut and that Naranbhai's conduct was immoral, which obviously hinted at an affair between the witness and Naranbhai but she denied the same. We have carefully considered her evidence but find no infirmity in her testimony. Thus, her evidence establishes beyond doubt that it was the appellant who had given the fatal blows to the deceased.

10. Additionally, the prosecution has also relied on the discovery of the sword at the instance of the appellant. The F.S.L. report shows that it was found to have been stained with the blood of the same group as that found on the clothes of the deceased.

11. In view of the above evidence, there is no escape from the conclusion that it was the appellant who was responsible for the injuries which resulted in the death of the Naranbhai. The medical evidence shows that the injuries were sufficient to cause death. There are no circumstances on record which would bring the case within any of the exceptions to Section 300 of the I.P.C. The learned Judge, therefore, rightly convicted the appellant of the offence under Section 302 of the I.P.C. There is no substance in the appeal and the same is dismissed.

(N.G. Nandi, J.)

(M.C. Patel, J.)

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